Supreme Court U.S.
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No. 05-988

In The

Supreme Court of the United States

LINDA LINGLE, in her official capacity as GOVERNOR OF THE STATE OF HAWAII,

Petitioner,

v.

EARL F. ARAKAKI, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether state taxpayers have standing to challenge the actions of state government or state agencies that expend, or involve the use of, state taxpayer dollars, simply because they pay taxes to the state?

PARTIES TO THE PROCEEDINGS

The following fourteen persons were plaintiffs-appellants in the proceedings in the United States Court of Appeals for the Ninth Circuit, and, as to this petition, are the Respondents before this Court: EARL F. ARAKAKI, EVELYN C. ARAKAKI, EDWARD U. BUGARIN, SANDRA PUANANI BURGESS, PATRICIA A. CARROLL, ROBERT M. CHAPMAN, MICHAEL Y. GARCIA, TOBY M. KRAVET, JAMES I. KUROIWA, JR., FRANCES M. NICHOLS, DONNA MALIA SCAFF, JACK H. SCAFF, ALLEN H. TESHIMA, and THURSTON TWIGG-SMITH. These Respondents will be referred to in the remainder of this petition as "Plaintiffs."

LINDA LINGLE, in her official capacity as GOVERNOR OF THE STATE OF HAWAII, was a defendant-appellee in the Ninth Circuit, and is the **Petitioner** before this Court.

The following six state officials were defendants-appellees in the Ninth Circuit, and, while technically Respondents before this Court (having not joined in this petition because all claims against them were dismissed below[1]), support this petition: GEORGINA KAWAMOTO, in her official capacity as DIRECTOR OF THE DEPARTMENT OF BUDGET AND FINANCE, RUSS SAITO, in

[1] These six officials were sued to the extent their respective state departments transfer receipts from the use of ceded lands managed by their departments to the Office of Hawaiian Affairs. Because both the District Court and the Ninth Circuit ruled that plaintiffs had no standing (under either a state taxpayer or trust beneficiary theory) to challenge the transfer or use of such non-taxpayer monies (App. 25-32, 125-26), these officials have effectively been dismissed from the lawsuit.

PARTIES TO THE PROCEEDINGS – Continued

his official capacity as STATE COMPTROLLER and DIRECTOR OF THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES, PETER YOUNG, in his official capacity as CHAIRMAN OF THE BOARD OF LAND AND NATURAL RESOURCES, SANDRA LEE KUNIMOTO, in her official capacity as DIRECTOR OF THE DEPARTMENT OF AGRICULTURE, TED LIU, in his official capacity as DIRECTOR OF THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM, and RODNEY HARAGA, in his official capacity as DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION.[2]

The following nine state officials were defendants-appellees in the Ninth Circuit, and, while technically Respondents before this Court (having not joined in this petition because all claims against them were dismissed below), support this petition: MICAH KANE, Chairman, QUENTIN K. KAWANANAKOA, MAHINA MARTIN, COLIN KAALELE, TRISH MORIKAWA, MILTON PA, STUART HANCHETT, BILLIE BACLIG, and MALIA KAMAKA, in their official capacities as members of the Hawaiian Homes Commission.[3]

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[2] We note that the names of the various state officials, who are sued in their official capacities only, are the names of the *current* officeholders. The persons holding those offices have changed over the course of the litigation.

[3] *See* footnote 2. We also note that many of these commissioners were erroneously left out of the original caption to the Ninth Circuit's decision below (App. 1-2).

PARTIES TO THE PROCEEDINGS – Continued

The Petitioner, along with the just-listed fifteen state officials, will be referred to collectively in the remainder of this petition as "State Defendants."

The following nine officials were defendants-appellees in the Ninth Circuit, and, while technically Respondents before this Court (having not joined in this petition), are expected to file a response supporting this petition: HAUNANI APOLIONA, Chairperson, ROWENA AKANA, DONALD CATALUNA, LINDA DELA CRUZ, DANTE CARPENTER, COLETTE Y.P. MACHADO, BOYD P. MOSSMAN, OSWALD STENDER, and JOHN D. WAIHEE, IV, in their official capacities as trustees of the Office of Hawaiian Affairs.[4]

THE UNITED STATES OF AMERICA, and JOHN DOES 1 through 10, were defendants-appellees in the Ninth Circuit, and are, pursuant to Supreme Court Rule 12.6, automatically designated as Respondents before this Court.

STATE COUNCIL OF HAWAIIAN HOMESTEAD ASSOCIATIONS, and ANTHONY SANG, SR., were defendant intervenors-appellees in the Ninth Circuit, and are, pursuant to Supreme Court Rule 12.6, automatically designated as Respondents before this Court.

HUI KAKO'O'AINA HO'OPULAPULA, BLOSSOM FEITEIRA, and DUTCH SAFFERY, were also defendant intervenors-appellees in the Ninth Circuit, and are,

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[4] *See* footnote 2.

PARTIES TO THE PROCEEDINGS – Continued

pursuant to Supreme Court Rule 12.6, automatically designated as Respondents before this Court.[5]

[5] We note that these intervenors were erroneously left out of the original caption to the Ninth Circuit's decision below (App. 1-2).

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